

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

KELLY-HARRISON, INC.,  
Plaintiff,  
v.  
WCM & ASSOCIATES,  
Defendant.

Case No. 2:24-cv-01752-RFB-NJK

Order

[Docket No. 49]

Pending before the Court is Plaintiff's motion to compel the depositions of Defendant's 30(b)(6) designee and Paul A. Sowell. Docket No. 49. Defendant filed a response. Docket No. 50; *see also* Docket No. 53 (duplicative filing). Plaintiff filed a reply. Docket No. 54. The motion is properly resolved without a hearing. *See* Local Rule 78-1.

## I. Background

On April 23, 2025, Plaintiff noticed the depositions of Defendant's 30(b)(6) designee and its president, Paul. A. Sowell. Docket No. 49 at 3. The depositions were rescheduled multiple times and ultimately set for June 25 and 26, 2025. *Id.* On June 19, 2025, Defendant's counsel informed Plaintiff that both the 30(b)(6) witness and Sowell did "not intend to show up for their depositions." Docket No. 49-1 at 48. On June 25, 2025, Defendant's counsel informed Plaintiff that "[he] originally did not think [that the] clients would be appearing for the depositions based upon conversations last week then they advised me they would be at the depos a couple days ago" but that Sowell had been in the ER, that he was on bedrest, and was unable to participate in his scheduled deposition. Docket No. 54-1 at 5-6. On June 25 and June 26, 2025, Plaintiff recorded Defendant's non-appearance. *Id.* at 11-12. The parties are now before the court on Plaintiff's motion to compel the deposition of Defendant's 30(b)(6) designee and Sowell. Docket No. 49.

## **II. Standards**

<sup>27</sup> “[B]road discretion is vested in the trial court to permit or deny discovery.” *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002); see also *Crawford-El v. Britton*, 523 U.S. 574, 598

1 (1998). “The discovery process in theory should be cooperative and largely unsupervised by the  
 2 district court.” *Sali v. Corona Reg. Med. Ctr.*, 884 F.3d 1218, 1219 (9th Cir. 2018).  
 3 Nonetheless, a party may seek an order compelling the opposing party to provide discovery if the  
 4 parties are unable to come to an amicable resolution of their dispute. Fed. R. Civ. P. 37(a)(1).  
 5 The party seeking to avoid discovery bears the burden of showing why it should not be  
 6 permitted. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). Arguments against  
 7 discovery must be supported by “specific examples and articulated reasoning.” *U.S. E.E.O.C. v.*  
 8 *Caesars Ent.*, 237 F.R.D. 428, 432 (D. Nev. 2006). “A strong showing is required before a party  
 9 will be denied entirely the right to take a deposition.” *Blankenship*, 519 F.2d at 429.

### 10 III. Analysis

11 At the outset, the Court notes that it is unclear why this dispute necessitated motion  
 12 practice. Defendant submits that the instant motion to compel is unnecessary as the depositions  
 13 were going to proceed until Sowell’s medical emergency. Docket No. 53 at 8. Defendant also  
 14 submits that “the Court should extend the discovery until sometime after August when Mr.  
 15 Sowell is expected to be able to travel and attend a deposition.”<sup>1</sup> *Id.* at 5. Plaintiff submits that  
 16 it had “no choice but to seek the Court’s intervention” because Defendant “has flatly refused to  
 17 appear for its properly noticed depositions.” Docket No. 49. Yet, instead of working with  
 18 Plaintiff to reschedule these depositions, Defendant raises several procedural objections. *See*  
 19 Docket No. 53. Outside of procedural arguments, Defendant fails to explain, or present points  
 20 and authorities as to why these depositions should not proceed.

#### 21       a. Timeliness

22 Defendant submits that the motion to compel was filed seven days before the close of  
 23 discovery and that “while Plaintiff did technically file the motion before the discovery deadline,  
 24 with only a week left to conduct discovery and the discovery deadlines having passed after the  
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26       <sup>1</sup> Defendant submits that it “is willing to extend the discovery deadline universally, not  
 27 just for the limited purpose of conducting depositions.” Docket No. 53 at 5. Other than that  
 conclusionary assertion, Defendant provides no basis for an extension of discovery. The discovery  
 cutoff expired on July 7, 2025. Docket No. 36 at 2.

1 hearing of this motion to compel, it might as well be counted as filing after the deadline.”  
 2 Docket No. 50 at 5. It has long been clear in this District that, absent unusual circumstances, the  
 3 outer limit for filing a motion to compel is the deadline for filing dispositive motions. *Garcia v.*  
 4 *Serv. Emps. Int'l Union*, 332 F.R.D. 351, 354 (D. Nev. 2019). Upon recording Sowell’s non-  
 5 appearance at the deposition on June 25, 2025, Plaintiff moved to compel his deposition  
 6 testimony in a timely manner, well before the deadline for filing dispositive motions. *See*  
 7 Docket No. 49 (filed on June 30, 2025); *see also* Docket No. 36 (dispositive motions due by  
 8 August 5, 2025).

9                  *b. Meet and Confer*

10 Defendant submits that Plaintiff failed to meet and confer. Docket No. 50 at 6. Plaintiff  
 11 submits that, following Defendant’s June 19, 2025, notice that it would not appear for the  
 12 scheduled depositions, Plaintiff promptly sought to meet and confer. Docket No. 54 at 6.  
 13 Plaintiff submits that, on June 25, 2025, counsel participated in a face-to-face meet and confer,  
 14 where Defendant’s counsel confirmed on the record that Defendant would not produce its  
 15 30(b)(6) designee or Sowell. *Id.* at 7.

16 “Discovery is supposed to proceed with minimal involvement of the Court.” *F.D.I.C. v.*  
 17 *Butcher*, 116 F.R.D. 196, 203 (E.D. Tenn. 1986). Counsel should strive to be cooperative,  
 18 practical and sensible, and should seek judicial intervention “only in extraordinary situations that  
 19 implicate truly significant interests.” *In re Convergent Techs. Securities Litig.*, 108 F.R.D. 328,  
 20 331 (N.D. Cal. 1985). The Federal Rules of Civil Procedure require that the party bringing a  
 21 motion to compel must “include a certification that the movant has in good faith conferred or  
 22 attempted to confer with the person or party failing to make disclosure or discovery in an effort  
 23 to obtain it without court action.” Fed. R. Civ. P. 37(a)(1). The Local Rules further expound on  
 24 this requirement, providing that discovery motions will not be considered “unless the movant (1)  
 25 has made a good-faith effort to meet and confer ... before filing the motion, and (2) includes a  
 26 declaration setting forth the details and results of the meet-and-confer conference about each  
 27 disputed discovery request.” Local Rule 26-7(c). This prefiling conference requirement is not  
 28 simply a formal prerequisite to seeking judicial intervention, but requires a fulsome discussion of

1 the issues in dispute. *Nevada Power v. Monsanto*, 151 F.R.D. 118, 120 (D.Nev.1993).

2       These meet-and-confer requirements are very important and the Court takes them very  
 3 seriously. At the same time, litigants should not expect courts to look favorably on attempts to  
 4 use the prefiling conference requirements as procedural weapons through which to avoid  
 5 complying with their discovery obligations. *See, e.g., Aevoe Corp. v. AE Tech Co.*, Case No.  
 6 2:12-cv-00053-GMN-NJK, 2013 WL 4714273, at \*2 (Aug. 30, 2013). Gamesmanship by an  
 7 opposing party that thwarts the meet-and-confer process is not grounds to deny a discovery  
 8 motion. *See, e.g., Nevada Power*, 151 F.R.D. at 120 (judicial consideration of a dispute is proper  
 9 when “one party has acted in bad faith, either by refusing to engage in negotiations altogether or  
 10 by refusing to provide specific support for its claims ...”). The text of Rule 37 reinforces this  
 11 proposition, requiring only that the movant “attempted” to engage in a rule-complaint  
 12 conference. Fed. R. Civ. P. 37(a)(1); *see also* Local Rule 26-7(c) (requiring a “good-faith  
 13 effort”). In addition, the Court retains the discretion to waive the meet-and-confer requirements  
 14 with respect to any particular motion based on the circumstances of that case. *See Rogers v.*  
 15 *Giurbino*, 288 F.R.D. 469, 477-78 (S.D. Cal. 2012); *see also Mielke v. Standard Metals*  
 16 *Processing, Inc.*, Case No. 2:14-cv-01763-JCM-NJK, 2015 WL 2152664, at \*1 (D. Nev. May 7,  
 17 2015) (collecting cases).

18       Defendant’s argument is at odds with the circumstances of the instant motion, especially  
 19 as Defendant’s counsel confirmed a week prior that Sowell and the 30(b)(6) witness were not  
 20 going to appear for the scheduled depositions, even though he said Sowell wasn’t appearing  
 21 because of health reasons, *see* Docket No. 50 at 8. Further, Plaintiff attempted to engage in a  
 22 meet and confer, but Defendant only confirmed that the depositions would not proceed, without  
 23 any meaningful alternative.<sup>2</sup> Accordingly, the Court will not deny the motion to compel on the  
 24 basis of the alleged failure to meet and confer.

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 27       <sup>2</sup> Further, the Court is not persuaded by Defendant’s argument that there was a good faith  
 28 attempt to participate in discovery, especially because of Defendant’s failure to attempt to  
 reschedule. *See* Docket No. 50 at 8-9.

*c. Other Relief*

2 Plaintiff requests the Court to “impose appropriate sanctions under Rule 37(d).” Docket  
3 No. 49 at 6. In this case, the Court is ordering that these depositions proceed. The Court is not  
4 persuaded that sanctions are warranted as this juncture.

#### IV. Conclusion

6 Accordingly, the motion to compel is **GRANTED**. Docket No. 49. Defendant's  
7 30(b)(6) designee and Paul Sowell are **ORDERED** to sit for depositions at a time and place to be  
8 noticed by Plaintiff. The discovery deadline in this case is extended until August 15, 2025, for  
9 the sole purpose of conducting these two depositions. Discovery is otherwise closed.  
10 Dispositive motions are due by September 15, 2025. The joint proposed pretrial order is due by  
11 October 15, 2025, 30 days after resolution of dispositive motions, or further order of the Court.

IT IS SO ORDERED.

Dated: July 28, 2025

Nancy J. Koppe  
United States Magistrate Judge